



1 of 60 DOCUMENTS

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RULE PROPOSALS

AGRICULTURE

DIVISION OF MARKETING AND DEVELOPMENT

43 N.J.R. 704(a)

Proposed Readoption: N.J.A.C. 2:53

[Click here to view Interested Persons Statement](#)

Stores

Authorized By: Alfred W. Murray, Director, Division of Marketing and Development and the State Board of Agriculture, Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: *N.J.S.A. 4:1-11.1, 4:1-24, 4:1-25 and 4:12A-1 et seq.*, specifically 4:12A-7 and 4:12A-20.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2011-072.

Submit comments by May 20, 2011 to:

Alfred W. Murray, Director
Division of Marketing and Development
New Jersey Department of Agriculture
PO Box 330
Trenton, NJ 08625-0330

The agency proposal follows:

Summary

Pursuant to *N.J.S.A. 52:14B-5.1, N.J.A.C. 2:53*, Stores, is scheduled to expire February 7, 2011. In accordance with

N.J.S.A. 52:14B-5.1c, the submission of this notice to the Office of Administrative Law extends that expiration date 180 days to August 6, 2011. The Department of Agriculture is proposing to readopt these rules, as they have been found to be necessary, reasonable and proper for the purposes for which they were promulgated. Readoption is necessary because Chapter 53 was originally promulgated to regulate the purchase and sale of milk and milk products by retail stores in the State of New Jersey, thereby providing protection to producers who sell and consumers who buy these products. As such, the rules proposed for readoption primarily affect stores licensed by the State of New Jersey to sell milk and milk products, and will also benefit New Jersey milk dealers, producers and consumers. These entities are defined in *N.J.S.A. 4:12A-1*. By regulating the manner in which stores licensed by the Department of Agriculture display retail prices, the Department can ensure that consumers are properly informed. In addition, the notice requirement mandated by these rules is beneficial because it gives the milk dealer adequate notice of the change, so he or she does not have an oversupply of unsaleable milk and it assures all milk bills are paid in a timely manner. Consumers and producers are provided additional protection through the recordkeeping requirements set forth in these rules. These recordkeeping requirements assist the Division of Marketing and Development in determining whether a licensed store has complied with the applicable statutes and rules of the Division, such as *N.J.S.A. 4:12A-1* et seq., *N.J.A.C. 2:48-1.1*, 2:53-1 and 2:56.

N.J.A.C. 2:53-1, 3 and 4 are reserved.

N.J.A.C. 2:53-2.1 sets forth the requirements for the proper display of current retail prices for milk and milk products offered for sale to the public. In addition, *N.J.A.C. 2:53-5.1* and 5.2 define what books and records are required to be maintained by licensed stores and what reports are to be submitted to the Director of the Division of Marketing and Development by licensed stores. *N.J.A.C. 2:53-5.3* describes the conditions under which information will be held confidential and references privileges and limitations set forth in 7 *CFR* 205.501 and 205.504 and *N.J.S.A. 47:1A-1* et seq. regarding access to information. In order to prevent predatory pricing, *N.J.A.C. 2:53-6.1* and 6.2 define "variable cost" and declare that it is unlawful to offer for sale or to sell milk or milk products below variable cost. Finally, the rules proposed for readoption require that licensed stores give adequate notice, as set forth in *N.J.A.C. 2:53-7.1*, to their current supplier of milk and milk products regarding their intent to change suppliers or add suppliers. These rules also require that the store pay all its indebtedness for fluid milk and milk products when the store changes suppliers.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The readoption of *N.J.A.C. 2:53* assures that the dairy industry and consumers will continue to receive the benefit of effective milk control regulation. In particular, the portion of the rules that requires stores to post prices near the dairy case is of great importance to the consumer. Every consumer should know, before they get to the cash register, what they would be required to pay for the product. Without such requirement, stores would be in a position to gouge consumers. Because of the importance of including milk and milk products in a healthy diet, these rules are necessary to ensure New Jersey consumers have access to quality milk at competitive prices and to ensure that the New Jersey dairy industry remains viable in this State. Failure to readopt this chapter would leave a void in the milk control program and result in unstable markets and destructive competition.

Economic Impact

The rules proposed for readoption are driven by economics and provide a benefit to New Jersey consumers, milk dealers, producers and retail stores. Specifically, these rules benefit New Jersey consumers by creating a market environment wherein adequate supplies of milk and milk products are available to meet consumer demands. Such benefits are a direct result of market stability and competitiveness provided by enforcement of the Division's rules.

Approximately 87 New Jersey dairy producers receive a direct benefit from the rules proposed for readoption by

fostering a marketing and production infrastructure conducive to the maintenance of efficient farming operations. New Jersey dairy farmers are important to the State's economy, particularly for rural communities. The rules proposed for readoption are important tools in insuring that dairy producers receive payment for their products. The rules proposed for readoption will have an economic benefit to New Jersey consumers, as well, by stabilizing milk prices and ensuring a strong dairy industry for the supply of quality milk and milk products.

Milk dealers, dairy producers, retail stores and consumers benefit from the maintenance of a stable, competitive marketplace wherein implementation of the Division's rules results in the minimization of predatory, disruptive activities. The notice rules assist dealers and subdealers with the collection of money owed for products delivered, help to insure a continuing source of supply to retail stores and provide for the orderly transfer of business.

Given that the annual licensing fees for the Department's dairy programs are based on the volume of milk sold per week, the reporting requirements of these rules proposed for readoption will provide the Department with an accurate forecast of the anticipated annual licensing [page=705] fees to be collected for the following licensing year. As a result, these rules also benefit the State of New Jersey by providing accurate data that its dairy programs can use to determine the amount of funding available for their operating costs.

There is no additional cost for compliance as a result of the rules proposed for readoption as described more fully in the Summary and Social Impact above. In fact, these rules will help ensure more stable business operations for dairy producers, milk dealers and retail stores. There will be a positive economic impact to all parties involved, by fostering timely resolution of complaints and ensuring the orderly flow of milk and milk products to consumers without disruption.

Federal Standards Statement

Executive Order No. 27 (1994) and *N.J.S.A. 52:14B-23* (P.L. 1995, c. 65) require administrative agencies that adopt, readopt or amend any State rules that exceed any Federal standards or requirements to include in the rulemaking a comparison between the two sets of standards and an explanation of the costs and benefits associated with adopting a State standard that exceeds a Federal standard. While Federal Milk Order No. 1 (Northeast Marketing Area), *7 CFR 1001.1* et seq., defines raw milk costs, it does not dictate milk prices at which retail stores may sell milk and milk products and therefore has no bearing on the regulation of retail stores. As related to this chapter, the rulemaking requirements are dictated by the New Jersey Milk Control Act, *N.J.S.A. 4:12A-1* et seq., and are not subject to any Federal requirements or standards. Therefore, a Federal standards analysis is required.

Jobs Impact

It is not anticipated that the rules proposed for readoption will result in the generation or loss of any jobs.

Agriculture Industry Impact

The rules proposed for readoption will have a positive impact on New Jersey agriculture by helping to maintain a viable agriculture industry in the Garden State as described in the Summary, Social and Economic Impact statements above, the rules proposed for readoption will have a positive impact on the agriculture industry.

Regulatory Flexibility Analysis

Both large and small businesses, as defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq., are affected by the rules proposed for readoption. However, differing standards are not deemed necessary because the requirements are not burdensome and because, while these rules may have an economic impact on these businesses, the Department knows of no less restrictive a system than expressed in the standards. Uniform standards for all milk dealers and retail stores are necessary to ensure adequate protection to the New Jersey consumer and dairy producer.

As indicated in the Summary above, recordkeeping and reporting requirements are imposed by these rules. Compliance, however, is not anticipated to be overly burdensome because the reports required are designed to be taken directly from ordinary records already kept by the licensees for managerial decision-making purposes. Licensees generally will have the necessary reporting systems currently in place and are not likely to experience the need for additional efforts to comply with these rules. Initial capital costs and annual costs of compliance are minimal for both large and small businesses; therefore, the Department has not applied differing or lesser standards based on business size. There are no professional services required to comply nor will any initial capital outlays be required of any business as a result of the rules proposed for readoption.

Smart Growth Impact

The rules proposed for readoption are consistent with the economic strategies as outlined within the Department's Smart Growth Plan. The rules proposed for readoption are consistent with the State's smart growth goals as they encourage the continued viability of the State's farmers. Therefore, the Department anticipates that there will be a positive impact on the State's Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules proposed for readoption regulate the purchase and sale of milk and milk products by retail stores in the State of New Jersey thereby providing protection to producers who sell and consumers who buy these products.

Smart Growth Development Impact

The rules proposed for readoption will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 within designated centers under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption regulate the purchase and sale of milk and milk products by retail stores in the State of New Jersey thereby providing protection to producers who sell and consumers who buy these products.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 2:53*.